IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/04/2003

C O R A M

THE HONOURABLE MR. JUSTICE F.M.IBRAHIM KALIFULLA

WRIT PETITION No.21123 of 1994
and W.P.Nos. 21124 to 21136 OF 1994 and
W.M.P.NOS.32138 TO 32151 OF 1994 AND 29602 OF 2002

W.P.NO.21123 OF 1994

Bava G.Chokkappa .. Petitioner

-Vs-

1. District Revenue Officer,
(Appellate Authority under
Kudiyiruppu Act),
Nagapattinam.

2. C.Karunanidhi (died), by his L.R.,(R3)

3. Jayalakshmi
(R3 added as per orders dt.1.7.2002
in WMP 1500 of 2001) .. Respondents in
W.P.No.21123/1994

S. Kaliyamurthy .. 2nd respondent in
W.P.No.21124/1994

S. Govindaswamy .. 2nd respondent in
W.P.No.21125/1994

Singaram .. 2nd respondent in
W.P.No.21126/1994

Settu @ Krishnamurthy .. 2nd respondent in
W.P.No.21127/1994

V. Rengan .. 2nd respondent in
W.P.No.21128/1994
A. Govindarajan Pillai(deceased)
G. Thiagarajan ...3rd respondent in
W.P.No.21129/1994

G. Nagarajan .. 4th respondent in
.W.P.No.21129/1994

G. Mangalam .. 5th respondent in
W.P. No.21129/1994

G. Saraswathi .. 6th respondent in
W.P. No.21129/1994

(Respondents 3 to 6 are
impleaded as L.Rs of the
deceased 2nd respondent as
per W.P.M.P.No.32009/2002)

G. Muthuswamy .. 2nd respondent in W.P.
No.21130/1994

V. Vedantam .. 2nd respondent in W.P.
No.21131/1994

C. Govindaraja Achari .. 2nd respondent in W.P.
No.21132/1994

Pakkirisamy .. 2nd respondent in W.P.
No.21133/1994

V. Thiagaraj .. 2nd respondent in W.P.
No.21134/1994

K. Govindarajan .. 2nd respondent in W.P.
No.21135/1994

K. Kunju Pillai .. 2nd respondent in W.P.
No.21136/1994

!For Petitioners ... Mr.K.C.Rajappa
in all Writ Petitions

^For Respondents ... Mr.V.Velumani, AGP
for R1 in all Writ Petitions
Mr.K.N.Pandian,
for R2 inW.P.Nos.21124&21135 of 1994
Mr.T.P.Manoharan
for R2 in W.P.Nos.21125 to 21131, 2133 & 21134 of 1994

Prayer: These Writ Petitions are filed under Article 226 of The Constitution of India for issuance of a Writ of Certiorari, for the reliefs as stated therein.

:O R D E R

In all these Writ Petitions, except W.P.No.21131 and 21133 of 1994, the question involved is as to the correctness of the grant of patta made by the first respondent in favour of the respective second respondents in exercise of its powers under the provisions of the Tamil Nadu Occupants Kudiyiruppu (Conferment of Ownership) Act 40 of 1971.

2. In the other Writ Petitions, viz., W.P.Nos.21131 and 21133 of 199 4, the question is about the correctness of the grant of patta made by the first respondent in favour of the respective second respondents in exercise of its powers under the provisions of the Tamil Nadu Rural Artisans (Conferment of Ownership) Act 38 of 1976?

3. The provisions relating to grant of patta are identical in both the Acts. The only difference being in the former, such grant of patta is in favour of the Agriculturists or Agricultural Labourers, whereas, in the latter, it is in favour of Rural Artisans. Under Act 40 of 1971, the appointed date is 19-6-1971.

4. The second respondent in all these Writ Petitions, originally filed applications before the Revenue Tahsildar, Tiruvarur on 3-4-1984 , when the jurisdiction of the said Authority came to be shifted to the Revenue Court, Mayiladthurai, fresh applications were filed by the applicants before the Revenue Court, Mayiladthurai on 4-8-1985. Even before the fresh applications came to be filed by all the applicants on 4-8-1985, there was a counter statement filed on behalf of the petitioner to the earlier applications dated 3-4-1984. The said counter was filed by the petitioner on 2-9-1985. After the change of jurisdiction from Tiruvarur to Mayildthurai and after filing of the fresh applications on

4-8-1985, the petitioner filed additional counter on 2-1-1989. Subsequently, by Amendment Act 39 of 1990 , the appointed date was shifted from 19-6-1971 to 1-4-1990.

5. All the applications were numbered as KMP Nos.131 to 144 of 1989 and 146 of 1989, in which, the Special Deputy Collector Mayiladthurai passed ex parte orders in K.M.P.No. 140 and 141 of 1989 rejecting the applications on merits. Subsequently, the same Authority also passed orders in all other applications, viz., K.M.P.Nos.131 to 139, 142 to 144 and 146 of 1989 on 20-6-1990 rejecting all the applications. The applicants, thereafter, preferred appeals before the first respondent in A.Nos.29 of 1992, 31 to 48 of 1992 and 57 of 1992 on 6-9-199 0. When these appeals were pending, applications were filed by the applicants under Section 151 of CPC before the first respondent on 19 -3-1993 for letting in additional evidence. The petitioner filed its counter affidavit to the interim applications on 23-4-1993. Memo of Arguments was also filed on behalf of the applicants and on behalf of the petitioner on 25-10-1993 and 7-3-1994. By the impugned order, the first respondent has allowed all the appeals by its order dated 7-8-1994.

6. Mr. K.C. Rajappa, the learned counsel appearing for the

petitioner in all these Writ Petitions, contended that the impugned orders are liable to be set aside first and foremost on the ground that the Appellate Authority, in exercise of jurisdiction vested with him, entertained certain additional materials in support of his conclusion while granting patta in favour of the respective second respondents. According to the learned counsel, when under the Act, while the original authority had every power and jurisdiction to record evidence and entertain the documents in the manner provided under the Act, in the absence of any such specific provision either in the Act or in the Rules, the Appellate Authority ought not to have entertained fresh materials while dealing with the appeal and therefore, any conclusions reached by the first respondent on that basis is liable to be set aside. The learned counsel also contended that none of the fresh materials which were taken on record by the first respondent, had any relevance to the issue in question and therefore, the patta granted by the first respondent even on the basis of the additional materials cannot be sustained. According to the learned counsel, the first respondent mis-construed the presumption to be drawn under the explanation to Sub Section 6 of Section 2 while granting the relief. It was also contended that in the absence of any evidence to show that the site was leased out to the second respondent by the original owner, it cannot be held that the second respondent proved the basic requirement of Kudiyiruppu in order to claim the benefit of grant of patta.

7. In W.P.Nos.21131 and 21133 of 1994, the learned counsel contended that under Section 1(2) of the Act, when the Act itself is not applicable to a Municipal town, the order of the first respondent in granting patta in favour of the respective second respondents was liable to be set aside.

8. As against the above submissions, Mr. T.P. Monoharan and K.N. Pandian, learned counsel appearing for the contesting second respondents, contended that all the respective second respondents-applicants were inducted as tenants by the original owner, namely, one Kamalambal prior to coming into force of the Act 40 of 1971 and Act 38 of 1976, that by virtue of the operation of Section 3 of the Act, the benefit automatically became available to the applicants, that since after some civil disputes amongst the family members, the petitioner attempted to interfere with the possession of the respective applicants, it became necessary for them to move the concerned authority for grant of patta under the Act and the said applications unfortunately came to be rejected by the original authority without proper understanding of the scope of the Act. According to the learned counsel, the very stand of the petitioner in the original counter dated 2-9-1985 would show that all the applicants were in possession of the lands in question as tenants and in the circumstances, when the petitioner failed to establish to the satisfaction of the first respondent that they were not so inducted as tenants by the original owner Kamalambbal, no fault can be found with the conclusion of the first respondent while granting patta in favour of the applicants. According to the learned counsel, when the petitioner did not examine himself nor produce any material to support his stand, he cannot find fault with the conclusions reached by the first respondent while granting patta under the orders impugned in these Writ Petitions.

9. According to the learned counsel, the applicants established to

the satisfaction of the authority concerned by examining three witnesses to the effect that the applicants put up superstructures in the respective sites and were living there right from the year 1968. It was also pointed out that the second witness of the applicants was a Vice Chairman of the Thiruvarur Municipality in the year 1986, that he was living near the houses of the applicants and that as he was also living in that place for more than 20 years, he was very much aware of the occupation of the superstructures by the applicants in the respective sites from 1968 onwards as contended by the applicants. It was further pointed out that the third witness who was examined as an independent witness, also confirmed the version of P.Ws.1 and 2.

10. According to the learned counsel, in the case of the applicants in W.P.Nos.21131 and 21133 of 1994, the question whether the site was situated in an area comprised in a Municipal town or in a township not having been proved by the petitioner, it cannot be held that the Act itself is not applicable to those cases.

11. As regards the first contention raised on behalf of the writ petitioner, Mr.K.C. Rajappa, learned counsel for the petitioner by drawing a comparison to Section 5 along with Section 12 of the Act, contended that while the authorised Officer had every power and jurisdiction to summon and enforce the attendance of witnesses and acceptance of any documentary evidence, such a power was not conferred on the appellate authority in an appeal filed under Section 5 of the Act. The learned counsel by referring to the Rules framed under the Tamil Nadu Act XL of 1971, further contended that the procedure contemplated for the disposal of the appeal being summary in nature, the appellate authority ought not to have entertained fresh evidence, while disposing of the appeals. For that purpose, the learned counsel relied on the following Judgments:
a) 1995 SC 2272 (Mukri Gopalan vs C.P. Aboobacker
b) 1950 SC 188(Bharat Bank vs Employees of Bharat Bank)

12. By referring to the above decisions, the learned counsel contended that the Quasi Judicial authorities were equated to the status of a Court or a Civil Court by virtue of such powers vested with such authorities by which such authorities were empowered to exercise such of those powers, and but for which they could not normally exercise those powers exercisable by a regular Civil Court. In other words, according to the learned counsel, unless the statute under which such authorities function were invested with necessary powers to function in the manner in which a regular Civil Court could act, there is no scope to hold that every other authority can also assume to himself the power of a civil Court and try to enlarge the area of operation in the exercise of its jurisdiction. The sum substance of the contention of the learned counsel is that when the first respondent herein, while dealing with an appeal, preferred under Section 5 of the Act had very limited jurisdiction to confine his scope of consideration with the materials gathered by the authorised Officer, the very entertainment of the additional documents while conferring the status of "Kudiyiruppu" in favour of the respective second respondent was beyond his jurisdiction.

13. I am unable to accept the stand of the learned counsel for the petitioner. In fact, in the judgment reported in 1997 4 SCC 741 (United Planters Association of Southern India vs K.G. Sangameswaran and Another) , while dealing with the scope of jurisdiction of the appellate authority functioning under Section 41(2) of the Tamil Nadu Shops and Establishment Act, the Hon'ble Supreme Court was pleased to hold that even though the procedure to be followed by the said authority was summary in nature, yet, being a quasi judicial authority, he was fully empowered to even permit the parties to let in evidence afresh before it.
As far as the appellate authority functioning under Section 41(2) of the Act is concerned, the scope of appeal concerns with the correctness of any order of termination of a person employed in a Shop or Commercial Establishment. The said provision provides that the appellate authority can set aside or uphold an order of termination. In order to uphold an order of termination, the employer will have to satisfy the appellate authority that the termination was for a reasonable cause or if it is for a misconduct, such misconduct was established in a departmental enquiry held for that purpose. In that context, when a contention was raised that it was not open for an employer to adduce evidence afresh in support of the misconduct levelled against the person employed, by making a departure from the existing position, it was held that it will be open for either parties to adduce such evidence in support of their respective stand. To reiterate the position clear, an Appellate authority functioning under Section 41(2) of the Tamil Nadu Shops and Establishments Act,though not a Civil Court and also that the Appeal preferred under the s aid provision is summary in nature, yet, the Hon'ble Supreme Court was pleased to hold that such an Authority can permit the parties to let in evidence afresh to any extent in support of their respective stand.

14. In the judgment reported in 2000 (3) MLJ 108(P. Sarathy vs State Bank of India), the Hon'ble Supreme Court, while dealing with the question as to whether the time taken by a person employed in perusing his appeal filed before the Appellate Authority functioning under Section 41(2) of the Tamil Nadu Shops and Establishments Act to get over the period of limitation by invoking Section 14 of the Limitation Act, the Hon'ble Supreme Court went to the extent of holding that such an appellate authority though not a Civil Court within the meaning of Civil Procedure Code is definitely a "Court" in order to avail the benefit provided under Section 14 of the Limitation Act.

15. In that context, the Hon'ble Supreme Court held in paragraph-9 as under:

"Deputy Commissioner of Labour (Appeals), Madras which is the authority constituted under the Tamil Nadu Shops and Establishments Act, 194 7 has the jurisdiction to adjudicate upon an order by which the services of an employee are terminated. He has the jurisdiction to decide whether the order of dismissal, passed by the employer was valid or it was passed in violation of any statutory rule or principles of natural justice. Under Section 41(3),the order passed by him is binding on the employer as also on the employee. Thus, the Deputy Commissioner of Labour (Appeals) may not be a "civil court" within the meaning of the code of Civil Procedure but it is definitely a "Court".

16. A reading of the said paragraph - 9 would show that what weighed with the Hon'ble Supreme Court was the exercise of jurisdiction by the statutory authority whereby it could analyse the correctness of an order of dismissal in the light of the statutory Rules or principles of natural justice and that such an order would be binding on the employer as well as the employee. Therefore, what is relevant is the status of the authority concerned and the ultimate binding nature of his order on the respective parties. If the above principles are born in mind and applied to the case on hand, it can be safely held that the status of the first respondent herein is far more superior. In that, he has been empowered with the jurisdiction to analyse a decision of an inferior statutory authority who has been specifically invested with the power under Section 12 to either summon the witnesses or entertain documents like any other civil Court. As far as the status of the first respondent is concerned, being a statutory Appellate Authority, the scope of the jurisdiction was sufficiently wide. Therefore, it will have to be held that what the Lower Authority can validly exercise can equally be done by the Appellate Authority in exercise of the wide powers inherently vested in him.

17. As far as his decision is concerned, after the pronouncement of his order in the appeal, no further remedy is provided under the Act. The order of the first respondent will become final and conclusive. It is needless to state about the binding nature of the order of the first respondent. Therefore, when an authority, who is inferior to the first respondent could exercise all the powers that are available to a Civil Court in the same breadth, it will have to be held that the first respondent as an appellate authority can equally exercise all those powers that can be validly exercised by the original authority. I am therefore, unable to accept the contention of the learned counsel for the petitioner that the first respondent exceeded his jurisdiction while entertaining additional documents on behalf of the respective second respondent at the appellate stage.

18. The next contention of the learned counsel for the petitioner is that none of the documents which were entertained by the first respondent at the appellate stage had any relevance to resolve the controversy viz., as to whether the second respondents satisfied the definition of "Kudiyiruppu" as defined under Section 2(8) of the Act. In order to appreciate the contention, the said provision needs extraction, which reads as under:
"Kudiyiruppu" means the site of any dwelling house or hut occupied, either as tenant or as licensee by any agriculturist or agricultural labourer and includes such other area adjacent to the dwelling house or hut as may be necessary for the convenience or such dwelling house or hut. From this distinction, it is clear that the occupant must be an agriculturist or agricultural labourer and occupies the site in the capacity of tenant or licensee".

19. According to the learned counsel, a person to show that he was occupying the "Kudiyiruppu" as an agricultural labourer or agriculturist, should establish that such occupation of the site of any dwelling house or hut was either as a tenant or as a licencee . According to the learned counsel, none of the additional documents can be stated to have established the said

relevant factor. The additional documents provided on behalf of the respective second respondent, were the certificate issued by Thiruvarur Village Administrative Officer, xerox copy of the ration card, property tax receipts, an order of District Munsif's Court Thiruvarur in O.S.NO.220/87 as well as that of Sub Court, Nagapattinam in O.S.Nos.51/82 and 41/83, an electoral roll of the Municipality of the year 1982 and the death certificate of one Govindarama Achari and his Will. It is not in dispute that the appointed date insofar as Tamil Nadu Act 40 of 1971 is concerned, the same is 19.6.1971.

20. Under Section 3 of the Act, any agriculturist or agricultural labourer, who was occupying any "Kudiyiruppu" on 19.6.71 either as a tenant or as a licencee would become the owner of such Kudiyiruppu with effect from the date of commencement of the Act, absolutely free from all encumbrances. Therefore, to claim the benefit of the said Section, a person will have to show that he was inducted as a tenant or as a licencee in the site of any dwelling house or hut or that such induction was on or before 19.6.71 and by virtue of such induction, the person continues to occupy the said site.

21. The additional documents filed on behalf of the second respondent were all of the period subsequent to 19.6.1971. In the Will of Thiru.Govindarama Achari, it is claimed that he was in occupation of the property situated in Door No.29-D/2, Kamalalayam Vadakarai, Thiruvarur for more than forty years. The Will is dated 10.3.92. Therefore, except the said Will, the other documents will be of no help to the various second respondents. Therefore, though I am of the firm view that the first respondent/Appellate aut hority had every power vested in him while dealing with the appeal preferred under Section 5 of the Act, to let in necessary additional evidence even at the appellate stage, as rightly contended by the learned counsel for the petitioner, it will have to be held that none of the additional documents can be said to have any nexus to the appointed date (viz.,) 19.6.1971.

22. The only other question that remains to be considered is as to whether the impugned order of the first respondent calls for any interference on merits. At this juncture, it is relevant to point out that in the case of the second respondent in W.P.No.21123/1994, the original authority dismissed the claim on the ground that he remained ex-parte. However, the appellate authority allowed his case also along with the case of the others.

23. One other factor which is relevant to be noted at this juncture is the case of the second respondents' in W.P.Nos.21131 and 21133 of 1994 which arose under Act 38/76. Therefore, I will deal with those two cases viz., W.P.Nos.21131 and 21133 of 1994 independently and whatever conclusions that are dealt with on merits herein after will be applicable to other writ petitions viz., W.P.Nos.21123 to 21130 of 19 94, 21132 of 1994 and 21134 to 21136 of 1994. In all these cases, the facts are identical. The applications were filed by the respective second respondents before the Revenue Court, Thiruvarur on 3.4.82. They also filed fresh applications on 4.8.85. Those applications were numbered as K.M.P.No.131 to 139 of 1989, 140 to 144/89 and 146/89. A perusal of those applications disclose that their claim was on the

basis that they were residing in the respective survey numbers, occupying a specified area from the year 1968 onwards and that they were employed on daily wage basis. In some of the applications, it is claimed that they were also doing certain other jobs such as carpentery, masonry etc. In all these applications, the petitioner herein filed a counter on 2-9-85 and an additional counter on 2.1.89. In the main counter in paragraph-3, it was specifically contended as under:
"..... taking advantage of a civil dispute in this respondent's family, it is stated that with the active connivance of at the instance of one K. Kamalambal the petitioner had been permitted to live in the hut formerly existing.....". (emphasis added)

24. This stand was common in all the counter affidavits. In the Additional counter, there was a specific contention to the effect that on the crucial date, the concerned second respondent was not in a possession of the property. In paragraph 5 of the Additional Counter a stand was taken to the effect
"..... whatever may be the dealings of the petitioner with any other authority or parties purporting to represent as owners, whose such claim is bogus, fraudulent, false, such dealings or claims will not bind this respondent".
25. It is also relevant to refer that the applications which were filed before the Revenue Court, Thiruvarur came to be transferred to the Revenue Court, Mayiladuthurai on the ground of jurisdiction. Therefore, ultimately, the applications came to be disposed of by the revenue Court, Mayiladuthurai. Insofar as K.M.P.No.141/89 which related to the second respondent in W.P.No.21123 of 1994, by an order dated 14 .5.90, the Revenue Court, Mayiladuthurai held that since the second respondent did not appear on the various dates when the application was posted between 25.10.89 and 9.5.90 and since he did not choose to examine any one on his side relying upon the stand of the writ petitioner, who was the respondent before the revenue Court, the claim was held to be not established. Accordingly, the same was dismissed. In the other applications, the Revenue Court examined apart from the concerned applicants, two other witnesses viz., one Thiru. Govindarajan and Thiru. Chellappan came to be examined as P.Ws.1 to 3. P.W.2 has deposed that he was the Vice-Chairman of Thiruvarur Municipality right from 1986, that he was living in Kamalalayam, Vadakari of Thiruvarur for nearly 20 years that his house was situated just 10 houses away from the houses of the concerned applicants, that all the applicants were living in the respective sites for more than 20 years by putting up their own superstructure and that their main livelihood was agricultural labour while one or two were employed as mason or a carpenter.

26. The Revenue Court also noted the evidence of P.W.3 supporting the version of P.W.2. The order further discloses that the petitioner herein did not appear when the case was posted on 30.5.90 for his evidence,that at the instance of the petitioner's counsel, the case was adjourned to 6.6.90 on which date also, the petitioner did not appear, but sought for further adjournment on the ground of illness. The authority, therefore concluded that the petitioner had nothing to say on his side. However, the Revenue Court held that the evidence let in on behalf of the respective applicants was not

acceptable and from that it was not possible to reach a conclusion that they

were agriculturists and that they were remaining in possession of the respective sites right from 1971. On that basis, all the applications were rejected.

27. When the applicants preferred appeals before the first respondent herein, the said appeals were numbered as Appeal Nos.29/92, 31 to 4 2/92 and 57/92. The appeal of the second respondent in W.P.No.21123/9 4 was numbered as 29/92 and the appeal of the second respondents in W.P.Nos.21131 and 21133/94 were numbered as 41/92 and 35/92 respectively. Before the appellate authority, the petitioner filed an interlocutory application for marking certain additional documents numbering seven. The appellate authority also took those documents on record in spite of a counter affidavit filed on behalf of the petitioner opposing the filing of additional documents.

28.In the earlier part of my order, I have held that there was no bar for the first respondent to entertain additional documents. However, I have also held that those additional documents pertained to later years and therefore, the same did not in any way support the claim of the respective second respondent that they were put in possession of the sites in question prior to the appointed date viz., 19.6.71. But, those documents, however, to a very la rge extent show that they continue to remain in possession as on the date when they filed applications before the Revenue Court as well as before the first respondent herein and also when they filed their appeals before the first respondent.

29. The crucial question for determination before the authority was whether the respective applicants were put in possession of the sites prior to the appointed date viz., 19.6.71.

30. Under Explanation 1 to Sub Section 8 of Section 2, it is provided that a presumption can be drawn to the effect that any person occupying the "Kudiyiruppu" is an agricultural labourer or agriculturist until the contrary is proved. Therefore, before any such presumption can be drawn the primary factor to be established is that a person is in occupation of the "Kudiyiruppu" . One will have to establish that he was either as a tenant or as a licencee occupied the site of any dwelling house or hut. It is the establishment of the said factor which alone will entitle any person to claim the benefit of becoming a owner as provided under Section 3 of the Act.

31. When the order of the original authority is perused, it will have to be stated that the concerned authority merely rejected the evidence let in on behalf of the respective applicants by simply stating that such evidence was not acceptable. Moreover, the authority has merely stated that the documents filed on behalf of the writ petitioner, established that the respective applicants were not agriculturists and that they were only daily coolies. It is not known as to how the original authority stated that he perused the documents filed on behalf of the petitioner when as a matter of fact the petitioner did not let in any evidence nor filed any documents on his

side. The authority has not also given any valid reasons for not accepting the oral evidence tendered on behalf of the re spective applicants.

32. When the order of the appellate authority is perused, even here, it cannot be held that the appellate authority gave any categoric finding to the effect that the respective applicants established their status as occupants of the sites as "Kudiyiruppudarar" on the appointed date viz., 19.6.71 in order to draw a presumption that they were the agriculturists. But that need not deter this Court from considering the claim of the applicants for grant of patta as granted by the first respondent accepting their claim. I say so because it is not a case where there was no material placed before the original authority or the appellate authority on behalf of the respective applicants and that the first respondent/appellate authority granted the relief without any basis. In fact all the materials required to conclude that the respective applicants were in occupation of the sites from any date prior to the appointed date was very much available on record. In such a situation, the question is whether they should be driven back to the first respondent or the original authority for recording any such finding to that effect. I feel that such an exercise would be only an empty formality, inasmuch as, my attention was drawn by either side to all the relevant particulars that were available on the records in respect of their respective stand.

33. Further Mr.K.C. Rajappa, learned counsel for the petitioner referred to the judgment of His Lordship Mr.Justice S. Jagadeesan reported in 2001 1 MLJ 528 (Chandira vs Arulmigu Poigaikarai Mariamman Temple, Avoor) to show that all cases need not be remitted back and that for reasons to be recorded here itself, the orders of the lower authority can be sustained. In fact in paragraph 14 of the above referred judgment, the learned Judge has held as under:

"Even though the Appellate Authority did not consider these aspects, there is no need to remit the matter as it will be an empty formality; especially when the petitioners failed to establish their claim as stated above. Hence the order of the Appellate Authority rejecting the claim of the petitioners is sustained for the reasons given above".

34. That was a converse case where the appellate authority rejected the claims without giving sufficient reasons though materials were very much available. Applying the above said ratio to the case on hand, it can be safely held that the conclusion of the appellate authority viz., the first respondent herein in the orders impugned in W.P. Nos.21123, 21124, 21125, 21126,21127, 21128,21129,21130, 21132, 21134, 2 1135 and 21136 of 1994 can be confirmed for the various reasons mentioned above.

35. In the case on hand, all the applicants viz., the second respondent herein made a specific claim to the effect that they were in occupation of the respective sites to a specified area situated in the concerned survey numbers right from 1968 onwards. In support of the said claim, apart from asserting the said factum by getting into the box before the original authority, they also examined P.Ws.2 and 3. In the cross examination, all the three witnesses maintained the position that they were remaining in the respective sites right from the date prior to the appointed

date viz., 19.6.71.

36. It was also claimed in their evidence that they were put in possession of the respective sites by one Tmt.Kamalambal. The said Kamalambal is stated to be none other than the sister-in-law of the petitioner. The relationship of the petitioner with the said Tmt.Kamalambal was through his elder brother viz., one Thiru late Bava Kalayanasundara Mudaliar. It is not in dispute that the applications were filed by arraying the petitioner as the opposite party. The petitioner in his counter as referred to above, took the stand that the second respondents/ applicants were permitted to live in the respective sites. It was only claimed that such occupation of the respective applicants was with the active connivance of Tmt. Kamalambal. It was also stated that the occupation was in a hut which was already in existence.

37. Even in the additional counter, the stand was that the dealings of the respective applicants with anybody, who claimed to be the owner (apparently referring to Tmt. Kamalambal) was not maintainable and that such a claim of the so called owner itself is bogus, fraudulent or false. On a reading of the above stated details, it is crystal clear that the possession of the respective applicants of the sites was not in dispute. Even though it was claimed on behalf of the petitioner that such possession was not lawful, unfortunately except the Ipse-Dixit of such an averment contained in the counter and the additional counter, there was no evidence much less an acceptable one to support the said stand. In fact the petitioner for the reasons best known to him remained absent at the time when he was called upon to let in evidence. As on date, there is nothing on record to show that the petitioner is the lawful owner of the respective sites in question. There is no iota of evidence to support the claim of the petitioner.

38. Mr.K.C. Rajappa, the learned counsel for the petitioner would only contend that the very fact that the petitioner was shown as respondent itself was sufficient to prove his ownership. I am afraid that based on such an assumption a valuable right in respect of the ownership of any immovable property can be conferred. In this context, it is relevant to mention that the stand of the applicants was that though they were lawfully inducted as tenants or they were licenced to occupy the respective sites by the real owner Kamalambal right from the year 1968, taking advantage of certain litigations that were perpetrated as against the said Kamalambal since the petitioner was attempting to interfere with their possession, the applicants wanted to get their rights straightened by virtue of the benefits conferred under the provisions of Act XL of 1971 as well as 38 of 76. Therefore, the stand of the petitioner that by virtue of his status as the respondent in the proceedings before the revenue authority, it should be taken for granted that he is the owner of the property has to be stated, only to be rejected. For all the above stated reasons, I do not find any merit at all in the claim of the petitioner. The Order of the first respondent herein is confirmed, though for the various reasons stated by me in the above stated paragraphs. The Writ Petitions in W.P.Nos.21123 to 21130 of 1994, 21132 of 1994 and 21134 to 21136/1994 fail and the same are dismissed.

39. As regards W.P.Nos.21131 and 21133 of 1994 the question that

arise for consideration is as to whether the claims of the respective applicants can be considered under Act XXXVIII of 1976. The contention was that by virtue of Sub Section 2 of Section 1 the applicability of the Act was not available to the areas comprised in a Municipal town or a town constituted by or under any law for time being in force. Though such a contention has been raised now, unfortunately neither before the original authority nor the appellate authority, such a contention seemed to have been either raised or considered. However, as the said question is purely a question of law, it cannot be held that such a question cannot be raised in this writ petition. But on this legal question Mr.T.P. Manoharan, learned counsel appearing for the respondents contended that there was no material on record placed at the instance of the writ petitioner that the respective sites fell within the area comprised in a municipal town or in a township constituted by or under any law for time being in force. When a contention was raised to the effect that very jurisdiction of the authority would stand excluded by virtue of the fact that the site itself fell within an area of a municipal town, it is for the person concerned to establish with satisfactory evidence to show that the area did fall within the Municipal town in order to exclude the jurisdiction. When the petitioner failed to discharge the said onerous responsibility in the manner known to law, he cannot be permitted to now state that the claim of the respective applicants should be rejected on that score. Therefore, in the absence of any acceptable material evidence in support of the said stand, there is no scope for interfering with the order of the first respondent on that score by presuming that the site fell within a Municipal Area. Such a presumption cannot be drawn for mere asking, especially when the petitioner failed to even show that he was the owner of the land in question.

40. For the various reasons stated above, these writ petitions fail and the same are dismissed. No costs. Consequently, the connected W. P.M.Ps are closed.

sr

To

The District Revenue Officer,
(Appellate Authority under
Kudiyiruppu Act),
Nagapattinam.